Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of	)	
	)	
Rules and Policies Concerning	)	
Multiple Ownership of Radio	)	MM Docket No. 01-317
Stations in Local Markets	)	
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

COMMENTS OF THE

AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS

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I. INTRODUCTION.

1. These comments are submitted on behalf of the American Federation of Television and Radio Artists, AFL-CIO ("AFTRA"), a national labor organization with a membership of over 80,000 professional employees working in the news, entertainment, advertising and sound recordings industries.

2. AFTRA's membership includes news reporters, anchors, sportscasters, talk show hosts, announcers, disc jockeys, producers, writers and other on-air and off-air broadcast employees working in network radio, syndicated radio programming, and local radio stations owned by independents and group owners. In addition, AFTRA represents recording artists and background singers whose sound recordings are played on radio stations. On behalf of its members, AFTRA submits these comments in response to the Commission's Notice of Proposed Rule Making and Further Notice of Proposed Rule Making adopted November 8, 2001 and released November 9, 2001, soliciting comments on the above-captioned proposed rule making.

3. AFTRA maintains over 300 collective bargaining agreements with the major networks and independent and group owned radio and television stations in markets of varying size throughout the country. AFTRA also has collective bargaining agreements with the major record labels covering recording artists and background singers. AFTRA has a uniquely "inside" view into the effects of the elimination and relaxation of the radio broadcast station ownership limits, and in particular, how the changes in the broadcast ownership rules promulgated in accordance with Section 202(b) of the Telecommunications Act of 1996 have adversely affected diversity and competition in radio to the detriment of the public interest.

4. AFTRA has previously filed comments with the Commission in the matters of MM Docket Nos. 98-35, 98-37, 91-221 and 94-322, relating to the national television ownership rule,

the local radio ownership rule, and the effects of consolidation in the broadcast industry since the passage of the Telecommunications Act of 1996 (the "Telecom Act").

5. Based upon its experience, AFTRA believes that the loosening of station ownership limitations since the Telecommunications Act of 1996 has had a devastating impact on diversity and competition in radio broadcasting, and consequently has not served the public interest. AFTRA has seen group owners in local radio markets put forth business plans that eliminate diversity in news, entertainment, and public affairs programming. Additionally, group owners have scrambled to control ever-increasing shares of local radio markets. As a result, group owners of radio stations compete against themselves for listeners. In this situation, where radio markets are dominated by an oligopoly of two or three media owners, there is also less of a competitive market for advertising revenue.

6. In particular, AFTRA has seen certain dominant radio groups such as Clear Channel Communications, expand its operations to such a degree that there is concern that both the radio and sound recordings industries have been forever transformed and destroyed. AFTRA believes that the current radio station ownership limitations have been inadequate to protect the public's interest in diversity and competition and that any further loosening of the broadcast ownership rules will cause even greater harm to diversity and competition in the industry.

II. THE APPROPRIATE STATUTORY FRAMEWORK.

7. The Commission has requested public comment on the "interplay between Section 202(b) and [the Commission's] public interest mandate,"[1] and, in particular, whether the numerical limits set forth in Section 202(b) were somehow intended to limit the Commission's

[1] Notice of Proposed Rule Making and Further Notice of Proposed Rulemaking, MM Docket Nos. 01-317 and 00-244 ("Notice"), ¶22.

authority to evaluate the effects of existing ownership limits on the public interest as measured by diversity and competition in the industry. AFTRA believes that in enacting the numerical limits set forth in Section 202(b), with the savings clause articulated in Section 601(c)(1), Congress intended to establish presumptively valid ownership limits, but to also re-affirm the Commission's statutory authority and responsibility to continually monitor and evaluate the effect of such ownership limits on the public's interest in diversity and competition

8. In the 1996 Act, Congress did not amend the 1934 Act, but rather directed the FCC to revise its rules in order to permit consideration and meaningful investigation of how the Commission's regulatory structure did or did not foster the public interest. For this reason, it is entirely appropriate to consider other factors beyond mere numerical limits. The FCC has been charged with monitoring the broadcast industry in order to ensure that the public interest is protected. If the numerical caps were definitive, the Commission would be effectively abdicating its role as protector of diversity, localism and competition.

9. Indeed, in <u>Fox Television Stations, Inc. v. Federal Communications Commission</u>, 280 F.3d 1027 (D.C. Cir. 2002) the DC Circuit Court of Appeals re-affirmed the long-standing policy that diversity and localism are important factors to consider in regulating broadcast station ownership. According to the Court, "[i]n the context of the regulation of broadcasting, 'the public interest' has historically embraced diversity (as well as localism), *see* <u>FCC v. National Citizens Commission For Broadcasting.</u>, 436 U.S. 775, 795 (1978), and nothing in §202(h) signals a departure from that historic scope. " <u>Fox Television Stations</u>, 280 F.3d at 1042.

10. The Commission has asked whether it is permitted to modify, eliminate, revise or replace the current rule with another framework in order to support the policy of promoting the public interest. Notice, ¶ 23. Clearly, the Commission has a statutory duty to continue to review

its rules related to ownership caps, and to make adjustments to those rules if and when it becomes clear that the public interest goal is not met by the existing regulatory structure.

11. With regard to numerical limits, the Commission has asked for comments as to whether these limits are definitive, whether they address only diversity, or if they are presumptively consistent with the public interest. Notice, ¶¶ 25-27. AFTRA has observed that the current numerical limits are insufficient to protect the public interest. In light of the fact that the existing numerical limits do not foster diversity, competition, or localism, it should be clear that the current numerical limits are not definitive and should not be seen as a limit on the Commission's ability to structure ownership rules in a way that best promotes the public interest.

III. CONSOLIDATION IN THE RADIO INDUSTRY SINCE 1996 HAS HARMED THE PUBLIC INTEREST BY REDUCING DIVERSITY AND COMPETITION IN LOCAL RADIO MARKETS.

12. The Commission seeks public comment on whether consolidation in the radio industry since 1996 has affected diversity and competition in local radio markets. Notice ¶ 28. Based on its experience, AFTRA believes that consolidation in the radio industry since 1996 has had a devastating impact on diversity and competition in local radio markets, which will only worsen with any further reduction of the numerical limits. Ownership consolidation in radio has reduced diversity in news and public affairs programming, has reduced competition for advertising in radio, and has greatly reduced diversity and led to anti-competitive market conditions in the music industry.

A. Diversity in News and Public Affairs Programming Has Been Reduced in Local Radio Markets Most Affected by Ownership Consolidation.

13. AFTRA's experience is that media owners have used their domination in markets to reduce rather than enhance the delivery of independent news and public affairs programming.

The claim by broadcast companies that the greater the increase in concentration of ownership, the greater the opportunity for diversity of content," Notice, ¶37, is simply not true.

14. It has been AFTRA's experience that when broadcast companies buy multiple stations in a market, these companies consolidate operations at the expense of diversity. Broadcast companies buy or seek to otherwise achieve control over several stations in a market in order to cut costs and achieve "economies of scale" by reducing staff and reusing or re-purposing content. The end result is that listeners get fewer perspectives on increasingly homogenized stations. A few examples follow:

15. After the passage of the 1996 dramatically increased the caps on radio station ownerships, CBS/Infinity acquired Group W/Westinghouse. As a result, the same group owner owned WBBM-AM and WMAQ-AM, the only two all-news radio stations in Chicago. CBS/Infinity eventually installed the same management team at both of its news radio stations. Shortly thereafter, CBS/Infinity announced plans to combine the newsrooms. Plans were made to use reporters and announcers interchangeably at the two stations, and to air the same reports on both stations.

16. Before the newsrooms at WMAQ-AM and WBBM-AM were combined, however, CBS/Infinity changed its business plan. Rather than operate the only two all-news radio stations in town in competition with each other, CBS/Infinity decided to use the WMAQ-AM frequency for its sports talk station, which was struggling on a less desirable area of the AM dial. CBS/Infinity took WMAQ-AM off the air, leaving WBBM-AM as the only all-news radio station in Chicago, the third largest market in the United States. In this case, consolidation of radio ownership led directly to the demise of diverse and antagonistic viewpoints on radio in Chicago. Prior to the 1996 Act, two all-news radio stations competed with each other in that

market. Following deregulation, those news stations first consolidated into one entity broadcasting on two frequencies. Then, when profits won out over diversity and competition, one station was killed, leaving a single all-news station in the market. Today, WBBM-AM has no competition in its format.

17. In recent contract negotiations with AFTRA in Chicago, CBS has proposed that it be permitted to cross-assign news reporters from its television station to its seven CBS/Infinity radio stations in that market. This means that the public in the third largest radio market in the country is would receive the same news and the same viewpoint from the same source, but on different outlets.

18. Also in Chicago, CBS/Infinity has proposed to have reporters from the Chicago Sun-Times Newspaper—a paper that is not owned by CBS, Infinity, or their parent company, Viacom—appear on CBS/Infinity television and radio newscasts and to have radio and television reporters file reports for the newspaper.   The substantive content at all CBS/Infinity Radio and Television stations and at one of Chicago's two largest daily newspapers would thus provide a single editorial perspective. In addition, the newspaper and the broadcast stations all disseminate the same editorial viewpoint on their station and newspaper websites.

19. In AFTRA's negotiations with ABC in Chicago, ABC has proposed to allow television reporters employed at WLS-TV to file stories for any of the four radio stations owned by ABC/Disney in that market.

20. In its negotiations with AFTRA at WLTE-FM in Minneapolis, CBS/Infinity proposed that it be permitted to broadcast on that station any material produced by any entity owned or controlled by Viacom/Infinity nationwide, including, but not limited to, any of its other radio stations, television stations, or cable ventures.

21. In Detroit, Infinity now owns both WXYT-AM and WWJ-AM, which both offer sports programming. Employees at these stations are cross-assigned to air sports reports on either station interchangeably.

22. The relaxation of the radio ownership limits has permitted group owners to dominate local markets and maximize economies of scale by reducing staff, cross-assigning journalists, and re-purposing the same material with the same editorial viewpoint for use in various different media outlets. The motivation for doing this is purely economic. As media owners scramble to dominate larger and larger percentages of shrinking advertising revenue, they have no incentive to provide diverse and antagonistic points of view. Rather, the rules encourage them to do exactly the opposite—to avoid competing against themselves by airing the same product on all of their airwaves, and by promoting themselves in other media by forming alliances with newspapers or broadcast stations in the same market which they may or may not own.

B. Competition in Advertising Has Been Reduced in Local Radio Markets Most Affected by Ownership Consolidation.

23. Based upon its extensive experience in the industry, AFTRA agrees with the Commission's longstanding recognition of the critical importance of competition and in evaluating whether broadcast ownership rules promote the public interest. AFTRA's experience indicates that the only way competition can be maintained in the broadcast industry is by separately owned outlets with the attendant expression of varied viewpoints and programming. Also, AFTRA agrees with the Commission's efforts to promote competition in the industry through the evaluation of the economics of local radio markets. However, the relaxation of ownership rules in local radio broadcasting, under the current rules, destroys competition.

24. The Commission seeks public comment on whether it should evaluate competition for audience or competition for advertising dollars as determinative of whether viable competition

exists. Notice, ¶40. Such a distinction is largely academic. Each media company competes against itself for listeners. Similarly, it is plain that under the current rules, the few companies that dominate radio are not competing at all for advertising dollars.

25. In large and mid-sized radio markets, consolidation of station ownership stifles competition for advertising dollars. In all of the top fifty radio markets, more than half of the radio advertising revenue in that market goes to two or three companies.[2] When companies are permitted to own multiple stations in a single market, they behave in anti-competitive manner, in an effort to tie up as much advertising revenue as possible. When two or three companies control an overwhelming percentage of advertising revenue, it is much more difficult for the few independent stations in the market to compete for the remaining share of the advertising dollars in that market.

26. As an example, in Pittsburgh, the 23rd largest radio market, two thirds of the advertising dollars in that market are controlled by Clear Channel and Infinity. The group owner with the third largest share of the market revenue, Frischling, only garners eight per cent (8%) of the market revenue.

27. Three companies control eighty-eight per cent (88%) of the advertising revenue in the 21st largest market, Tampa. Clear Channel controls thirty-nine per cent (39%) of the market revenue. Infinity gets twenty-nine per cent (29%) of the revenue. Cox comes in third with twenty per cent (20%) of the market revenue. Independent radio owners and smaller groups must divide up the remaining share of the advertising revenue in that market. The remaining twelve per cent (12%) is less than the percentage controlled by any of the top three companies in that market. [3]

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[2] "Who Owns What," March 18, 2002.
[3] Id.

28. In Middlesex-Somerset, a Market ranked 33, radio advertising is dominated by two companies that control ninety-five per cent (95%) of the market ad revenue.

29. The consolidation of station ownership in a market has an anti-competitive effect. In light of the destruction of diversity and competition, the Commission must recognize that the current ownership limits are inadequate to maintain diversity and competition, and that the ownership rules should not be further relaxed.

IV. RADIO OWNERSHIP CONSOLIDATION HAS CAUSED PARTICULAR HARM TO RECORDING ARTISTS AND TO THE MUSIC INDUSTRY.

A. Radio Ownership Consolidation Has Greatly Reduced Diversity and Localism in the Music Industry.

30. The Commission also seeks comment on whether diversity should be defined and measured differently for radio broadcasting than for other media. Notice, ¶32. Whether or not such distinctions should be drawn, the Commission should note that radio, as a medium, is unique not only because of its historically local character, but also because of its vital connection and interrelationship with the recorded music industry. With the consolidation of radio ownership since 1996, the local character of radio has largely vanished, there has been a sharp reduction in the amount and variety of regional distinctions in music broadcast over the radio, and certain anti-competitive business practices have taken hold in the music industry.

31. Consolidation has resulted in the elimination of certain music formats from the radio. Where a radio group owner dominates in a market, the result is often that this company will own all or most of the stations in one particular format.[4] For example, four radio station groups – Chancellor, Clear Channel, Infinity and Capstar – control 63 percent of the 41 million listeners of the Contemporary Hit Radio/Top 40 format nationwide. The same four groups also control 56

[4] Corporation for Public Broadcasting, Competitive Scan, Jacobs Media, January 2001, p. 16 ("Competitive Scan")

percent of the 28 million listeners of the country music format.[5] As a result of ownership consolidation, the classical, jazz, and bluegrass formats have largely disappeared from the radio.

32. Dominant radio station groups have also abandoned traditional modes of music selection that were responsive to local tastes and preferences, such as through disc jockeys and local program directors. Now, the dominant radio group owners make their music selections for all radio properties in a central location, as a national "play list" and then dictate these play lists to local stations nationwide. The use of such national play lists has eliminated local flavor and limited the diversity of music played on radio. As one commentator noted, "In many cities where one company owns up to half a dozen stations, operations are overseen by a single general manager and ads are sold by a unified business staff. Guidelines for play lists are sent out of from the company's radio branch headquarters in Covington, Kentucky. Musical formats echo one another from coast to coast, with little regional variation."[6] Such programming fails to serve the local public that the owner is licensed to serve, as well as harming performing artists.

33. Another result of industry consolidation has been a sharp increase in the amount of advertising, as opposed to programming, broadcast on radio stations. A 1999 study conducted jointly by Edison Media Research, Arbitron, and Radio & Records shows that the amount of time spent broadcasting advertisements on radio has increased significantly over the past several years.[7] Empower Media Marketing has reached similar conclusions on the increase in commercial loads, finding that commercial radio spot loads increased fourteen per cent (14%) from 1997 to1998 and six per cent (6%) from 1998 to1999.[8] The more time spent on

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[5] Wirth, Todd., "Nationwide Format Oligopolies," *Journal of Radio Studies*, VIII (2), (2001), p. 255.

[6] "The Day the Music Died," Schapiro, Mark, Salon.com, July 25, 2000, www.salon.com/business/feature/2000/07/25/sfx

[7] Empower Media Marbeting, www.empowermm.com\news

[8] "Internet Radio," Financial Times, June 7, 2000, Christopher Grimes and www.empowermm.com/news_release42.htm)

advertisements, the less time there is for music (or news or public affairs programming, for that matter). This harms both performing artists, who now have fewer opportunities to have their recordings heard, and the members of the listening public, who are exposed to less variety and more commercials.

34. There has also been a sharp increase in the number of syndicated programs carried by local commercial radio stations.[9] Syndicated programming decreases the variety and local flavor of the music that is broadcast, harming both the public and recording artists.

B. Radio Ownership Consolidation Has Created an Anti-Competitive Market in Music.

35. Group radio owners have not only achieved dominant market power through vertical integration in a local market, but have also achieved overwhelming power and control over the music industry in general. For example, Clear Channel, a company that owns over 1200 radio stations, also owns tens of thousands of billboards, and various promotion companies and venues. In 1999, Clear Channel purchased SFX Entertainment, the nation's most powerful concert promoter. This gave Clear Channel control of the concert promotion industry in most of the key regions of the US virtually overnight. Clear Channel therefore has a clear economic interest in promoting, through its radio properties, its own concerts and tours over those of the competition. It also has an interest in limiting the promotional support of bands and artists who are performing for other companies, at other venues or who are sponsored by other stations.

36. Due to their sheer market power, these large ownership groups now have the ability to make or break a hit song.[10] Dominant radio group owners now control the music market through exclusive arrangements with "independent promoters," who decide what music gets put on the play lists and played on the stations. Record companies and royalty artists are forced

[9] Competitive Scan, p. 19

to pay the promoters large sums of money in order to get their music on a play list, and the independent promoters (pursuant to their exclusive arrangements with the radio station groups) pay the radio station groups for the right to decide the play lists. The public interest and the recording artists are harmed because the decision of what to play is not based on the quality of the recording or local community tastes. Furthermore, the lion's share of these promotions costs are charged back to recording artists.

37. For example, a large radio group, Cumulus, has structured an arrangement with independent record promotion firm Jeff McClusky and Associates to represent all of its stations in dealings with the record industry. McClusky receives exclusive access to the programming executives who oversee Cumulus' 212 stations and Cumulus receives an estimated $1 million annually from McCluskey. All music that is included on the Cumulus playlist for airplay on Cumulus' local stations must go through the McClusky organization. Program Directors at the local level have no input in the selection of new music for their stations, thus making local research unnecessary. Every Tuesday, each Cumulus Program Director receives an e-mail outlining the new music its Program Directors must 'add' that week. Local tastes, audience needs, and individual and cluster strategies take a back seat to the profit generated by ceding control of Cumulus' music."[11] The consolidation of radio owners concerns other concert promoters. "It's a two-sided sword," says Gary Bongiovanni, editor of the concert industry trade Pollstar, "giving them the power to say: ' Do your show with us, and give your record heavy [national] airplay.'" The ability to leverage radio play for concert appearances veers

[10] Wirth, 249-250.
[11] Competitive Scan, p. 22.

dangerously close to what was once known as payola.[12] Essentially, the "money ends up not in fewer pockets, but in one huge pocket."[13]

38. In this climate, some of the remaining independent promoters have alleged that Clear Channel is engaging in anti-competitive behavior by using its leverage to force smaller companies out of business. In 2001, for example, the mid-size promoter NIPP in Denver, CO brought suit against Clear Channel, alleging that Clear Channel – which owns all three rock stations in the Denver area – refused to run ads promoting a music tour that had been promoted by NIPP instead of a Clear Channel promoter.[14] There have been other allegations from bands and performers – mostly off the record for fear of retaliation – who have stated that radio station groups have pressured them into playing shows for free in exchange for airplay, or who have had their songs removed from play lists for playing non-exclusive venues.[15]

39. With the increased leverage resulting from ownership consolidation, at least one group owner is also attempting to charge labels for merely identifying the name of the artist and song played. Salon.com has reported that Clear Channel plans to sell song identification as a form of advertising.[16] This miserly practice harms musicians and citizens as it makes it difficult for radio listeners to identify new artists and purchase music and impacts the ability of new and independent artists to succeed.

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[12] "The Day the Music Died," Schapiro, Mark, Salon.com, July 25, 2000, www.salon.com/business/feature/2000/07/25/sfx

[13] Id.

[14] Adler, Carlye. "Backstage Brawl", Fortune Magazine, March 4, 2002. http://www.fortune.com/indexw.jhtml?channel=artcol.jhtml&doc_id=206526
Ahrens, Frank. " Making Radio Waves", Washington Post, August 22, 2001. http://www.washingtonpost.com/ac2/wp-dyn/A43817-2001Aug21?language=printer

[15] Boehlert, Eric. "Rock n Radio Rumble", Salon.com, August 8, 2001. http://www.salon.com/ent/clear_channel/2001/08/08/riverbend/index.html

[16] Eric Bohlert, "Pay for Play", Salon.com, March 14, 2001 http://www.salon.com/ent/feature/2001/03/14/payola/index.html

C. The Harm to the Public Interest Caused by Ownership Consolidation Is Illustrated By Clear Channel.

40. We have provided specific examples of how, in both broadcasting and sound recordings, the existing rules stifle competition and eliminate diversity and localism. These problems in the broadcasting and sound recordings industries are connected. The intersection of these problems is best illustrated in the case of the largest group owner of radio stations in the United States, Clear Channel Communications.

41. Clear Channel owns more than 1200 radio stations across the country, including multiple stations in 45 of the 50 largest radio markets. Since Clear Channel's exponential growth is tied directly to the deregulation made possible by the 1996 Act, it is instructive to review the business practices employed by Clear Channel in the current climate. As a review of Clear Channel's operations makes clear, its unregulated ownership consolidation in radio is destroying diversity and localism in music and is promoting anti-competitive market conditions.

42. At its music stations, Clear Channel's business plan works against the policy goals of diversity and competition because Clear Channel promulgates uniform radio formats across the country. Clear Channel engages in the centralized decision-making of play lists described above, ¶ 32. Clear Channel markets a cookie-cutter format with a single national play list that it broadcasts on all of its stations nationwide. Because Clear Channel's national play list model cannot accommodate local variations, local, independent music acts are unable to get airplay on their local stations in the cities where they live and work. This business plan was made possible by the broad horizontal integration of Clear Channel, which is, in turn, a direct result of the relaxation of radio station ownership limits.

43. Clear Channel has also eliminated any local character to its programming by replacing local on-air talent with nationally "voice-tracked" air shifts.[17] Clear Channel announcers pre-record the announcements and tags for a complete air shift, usually in a remote location. Clear Channel then edits in the music from its standardized play list and airs the entire package in another city, far from where the announcements were recorded. Pursuant to this voice-tracking business plan, local radio audiences may be led to believe that the radio programming they hear is local, when in fact, the programming is national with no local accountability or direction.

44. In 1990, the Florida Attorney General fined Clear Channel $80,000 for conducting a national contest that it held erroneously held out as being limited to local markets.

45. The current business practices of Clear Channel, made possible by deregulation and its resulting domination of local radio markets, are currently the subject of a number of anti-trust inquiries. Congressmen Anthony Weiner and Howard Berman have called on the Department of Justice and the Federal Communications Commission to review activities by Clear Channel made possible by its domination of local radio markets. Among the charges that concern Rep. Berman is the allegation that Clear Channel has punished sound recording artists by not permitting songs to be played on Clear Channel station in retaliation against artists' refusal to hire concert promoters also owned by Clear Channel.[18]

46. Representative Wiener has also called for an investigation into allegations that Clear Channel blocked a sale of an independent concert promoter so that it could be the exclusive concert promoter of an amphitheater in Pennsylvania[19]

[17] Mathews, *A Giant Radio Chain Is Perfecting the Art of Seeming Local*, Wall St. J., February 25, at A1, col. 1.
[18] Jeff Leeds, "Clear Channel: An Empire Built on Deregulation," Los Angeles Times, February 25, 2002
[19] Inside Radio, "Another Congressman calls for a second anti-trust probe against Clear Channel," March 21, 2002.

47. The allegations that have been made against Clear Channel raise serious questions of how ownership consolidation in radio has harmed the public interest and the Commission should fully investigate these allegations prior to issuing any further rules loosening the existing ownership limits.

V. CONCLUSION.

48. Pursuant to its statutory authority and responsibility under the 1934 Act and Section 606 to evaluate and protect diversity and competition in the radio broadcast industry on behalf of the public, the FCC should conduct public hearings on the effect of deregulation and ownership consolidation in the radio industry since 1996. The FCC should gather data and investigate complaints of anti-competitive behavior by companies that now dominate local radio markets.

Respectfully submitted,

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